

(B) Upon being served with an order to disclose a record, the General Counsel shall endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure shall be made at the time the NSA/CSS complies with the order or subpoena.

(xii) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

(2) Except for disclosures made in accordance with paragraphs (h)(1)(i) and (ii) of this section, an accurate accounting of disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator.

(i) The accounting shall include the date, nature, and purpose of each disclosure of a record to any person or to another agency; and the name and address of the person or agency to whom the disclosure is made. There need not be a notation on a single document of every disclosure of a particular record, provided the record holder can construct from its System the required accounting information:

(A) When required by the individual;

(B) When necessary to inform previous recipients of any amended records, or

(C) When providing a cross reference to the justification or basis upon which the disclosure was made (including any written documentation as required in the case of the release of records for statistical or law enforcement purposes).

(ii) The accounting shall be retained for at least five years after the last disclosure, or for the life of the record, whichever is longer. No record of the disclosure of this accounting need be maintained.

(iii) Except for disclosures made under paragraph (h)(1)(vii) of this section, the accounting of disclosures shall be made available to the individual to whom the record pertains. The individual shall submit a Privacy Act Information Request form to the Privacy Act Coordinator in the office keeping the accounting of disclosures.

(3) Disclosures made under circumstances not delineated in paragraphs (h)(1)(i) through (xii) of this section shall only be made after written

permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each separate case; *i.e.*, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(4) An individual's name and address may not be sold or rented unless such action is specifically authorized by law. This provision shall not be construed to require withholding of names and addresses otherwise permitted to be made public. Lists or compilations of names and home addresses, or single home addresses will not be disclosed, without the consent of the individual involved, to the public, including, but not limited to individual Congressmen, creditors, and commercial and financial institutions. Requests for home addresses may be referred to the last known address of the individual for reply at his discretion and the requester will be notified accordingly.

§ 322.6 Establishing exemptions.

(a) Neither general nor specific exemptions are established automatically for any system of records. The head of the DoD Component maintaining the system of records must make a determination whether the system is one for which an exemption properly may be claimed and then propose and establish an exemption rule for the system. No system of records within the Department of Defense shall be considered exempted until the head of the Component has approved the exemption and an exemption rule has been published as a final rule in the FEDERAL REGISTER.

(b) No system of records within NSA/CSS shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption rule for the system of records has been published as a final rule in the FEDERAL REGISTER.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

(e) Consistent with the legislative purpose of the Privacy Act of 1974, NSA/CSS will grant access to non-exempt material in the records being maintained. Disclosure will be governed by NSA/CSS's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal or civil violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(f) Do not use an exemption to deny an individual access to any record to which he or she would have access under the Freedom of Information Act (5 U.S.C. 552).

(g) Disclosure of records pertaining to personnel, or the functions and activities of the National Security Agency shall be prohibited to the extent authorized by Pub. L. No. 86-36 (1959) and 10 U.S.C. 424.

(h) Exemptions NSA/CSS may claim.

(1) *General exemption.* The general exemption established by 5 U.S.C. 552a(j)(2) may be claimed to protect investigative records created and maintained by law enforcement activities of the NSA.

(2) *Specific exemptions.* The specific exemptions permit certain categories of records to be exempt from certain specific provisions of the Privacy Act.

(i) *(k)(1) exemption.* Information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy.

(ii) *(k)(2) exemption.* Investigatory information compiled for law-enforcement purposes by non-law enforcement activities and which is not within the scope of Sec. 310.51(a). If an individual is denied any right, privilege or benefit that he or she is otherwise entitled by federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. This subsection when claimed allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(iii) *(k)(3) exemption.* Records maintained in connection with providing protective services to the President and other individuals identified under 18 U.S.C. 3506.

(iv) *(k)(4) exemption.* Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(v) *(k)(5) exemption.* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(vi) *(k)(6) exemption.* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vii) *(k)(7) exemption.* Evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure

of such material would reveal the identity of a confidential source.

§ 322.7 Exempt systems of records.

(a) All systems of records maintained by the NSA/CSS and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) GNSA 01.

(1) *System name:* Access, Authority and Release of Information File.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *AUTHORITY:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essen-

tial to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(c) GNSA 02.

(1) *System name:* Applicants.

(2) *Exemption:* (i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *AUTHORITY:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity